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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

COLONIZE MEDIA, INC.,

Plaintiff,

v.

TATE A. PALMER, TRIWOLF
MEDIA, LLC and TANGO MULTI
MEDIA PRODUCTIONS, LLC,

Defendants.

) **Case No.: 1:20-cv-01053-DAD-**
) **SAB**

) **PLAINTIFF'S FIRST**
) **AMENDED COMPLAINT**
) **AND JURY DEMAND**

) Judge: Hon. Dale A. Drozd
)
)

Plaintiff Colonize Media, Inc. ("Colonize" or "Plaintiff"), through its undersigned attorneys, alleges the following against Defendants:

JURISDICTION AND VENUE

1
2 1. This is a civil action in which Plaintiff seeks declaratory relief, monetary
3 damages and injunctive relief against Defendants.

4 2. This Court has jurisdiction under 18 U.S.C. § 1030 *et seq.*, 18 U.S.C. §
5 1836 *et seq.*; and 28 U.S.C. § 1331 (federal question jurisdiction).

6 3. This Court has supplemental jurisdiction over all common law claims
7 pursuant to 28 U.S.C. § 1367.

8 4. This Court has personal jurisdiction over Defendants, and venue in this
9 District is proper under 28 U.S.C. § 1391(b) and (d) and 28 U.S.C. § 1400(a), in that the
10 Defendants or their agents are conducting business in this District, Colonize is located
11 in, and conducts business in, this District, and a substantial part of the acts of
12 infringement complained of herein occurred in this District.

PARTIES

13
14 5. Colonize is a corporation organized and existing under California law and
15 authorized to do business in California, with its principal place of business in the State
16 of California, County of Stanislaus.

17 6. Colonize is primarily engaged in the business of digital music distribution
18 and monetization.

19 7. Plaintiff is informed and believes, and thereon alleges, that Defendant, Tate
20 Palmer ("Palmer"), is a natural person with a place of residence in Los Angeles,
21 California.

22 8. Colonize is informed and believes, and thereon alleges, that Defendant
23 Triwolf Media, LLC ("Triwolf") is a limited liability company duly organized and
24 existing under the laws of the State of California with its principal place of business 548
25 East Alisal Street, Salinas, California 93905.

26 9. Colonize is informed and believes, and thereon alleges, that Triwolf is
27 primarily engaged in the business of exploiting intellectual property rights, including
28 sound recordings.

10. Colonize is informed and believes, and thereon alleges, that Defendant Tango Multi Media Productions, LLC (“Tango”) is a limited liability company duly organized and existing under the laws of the State of California with its principal place of business at 548 East Alisal Street, Salinas, California 93905.

1 and proprietary business practices that provide Colonize with an advantage over its
2 competitors.

3 21. In order to effectively digitally distribute, monetize and administer the
4 sound recordings exploited on the Retail Platforms, Colonize must obtain an
5 International Standard Recording Code (“SR Code”) which, in essence, acts as a unique
6 digital fingerprint for the particular sound recording to which the SR Code is assigned.

7 22. The SR Code helps the sound recording owner or administrator to properly
8 track and account for the digital exploitation of the sound recording, and to prevent the
9 improper exploitation of unauthorized digital copies of the same sound recording.

10 23. Both Colonize and the Retail Platforms rely on SR Codes to manage the
11 exploitation of the sound recordings given to them and to ensure that the appropriate
12 rights holder is paid whatever remuneration to which the rights holder is entitled.

13 24. Obtaining SR Codes for all of the sound recordings administered and
14 managed by Colonize is time consuming, expensive, and requires significant effort.
15 Colonize must input ownership and other information regarding each sound recording
16 into the international SR Code system and pay a fee for each code issued.

17 25. The SR Codes are not generally known to the public and can only be
18 obtained after applying for a code and paying the fee.

19 26. Possession of the SR Codes provides a significant benefit to the holder
20 because the codes allow the code holder to efficiently monetize, distribute and protect
21 the associated sound recording.

22 27. In addition to the SR Codes, Colonize also compiles other proprietary
23 metadata created by Colonize relating to the sound recordings it distributes (the
24 “Metadata”) in order to track and analyze the exploitation of those particular sound
25 recordings and to create royalty statements for its clients.

26 28. The Metadata is not generally known to the public and can only be obtained
27 after expending significant effort extracting the Metadata.

28 29. Like the SR Codes, possession of the Metadata provides a significant

1 benefit to the holder because the Metadata allows the holder to efficiently monetize,
2 distribute and protect the associated sound recording.

3 30. The SR Codes and Metadata for the sound recordings that Colonize
4 distributes were compiled and stored on a hard drive to which only officers of Colonize
5 were given authorization to access (“Hard Drive”).

6 31. Colonize is informed and believes, and thereon alleges, that the Hard Drive
7 contained SR Codes and Metadata for thousands of sound recordings.

8 32. The information on the Hard Drive took hundreds of hours of effort and
9 cost thousands of dollars to compile.

10 33. The Hard Drive essentially functioned as an electronic client and inventory
11 list which was confidential and not available to the public.

12 34. Other than two of Colonize’s officers, no employees or third-party parties
13 had access to the SR Codes, Metadata or Hard Drive.

14 35. As part of its business operations, Colonize creates royalty statements for
15 its clients that itemize the source and amounts of royalties payable as a result of
16 Colonize’s distribution and monetization of the sound recordings that it manages.

17 36. The creation of these royalty statements requires tremendous effort,
18 including the tedious review and copying of a large amount of information received by
19 Colonize from its many Retail Platform business affiliates.

20 37. In or about September 2017, Colonize engaged a computer programmer to
21 create a custom computer program to automate and optimize Colonize’s collection,
22 compilation and analysis of the information it receives from its Retail Platform
23 business affiliates and create royalty statements for Colonize’s clients (“Proprietary
24 Computer Program”).

25 38. The Proprietary Computer Program was made for Colonize as a “work-
26 for-hire,” as defined by the U.S. Copyright Act.

27 39. The Proprietary Computer Program was commissioned by Colonize and
28 paid for by Colonize.

40. As part of its business operations, Colonize has also developed a unique, proprietary and confidential business process and structure that concerns the acquisition, cataloging, digital distribution and highly profitable monetization of sound recordings which gives Colonize an advantage over its competitors (“Business Process”).

Colonize's Hiring of Palmer

41. On or about October 1, 2015, Colonize hired Palmer to act as its Chief Operations Officer.

42. As the Chief Operations Officer, Palmer was responsible for overseeing the digital distribution and monetization of over two hundred fifty thousand (250,000) sound recordings under Colonize's management and administration.

43. Palmer's job duties included, but were not limited to: (i) interfacing and negotiating with the Retail Platforms; (ii) creating and managing the technological structures and protocols for the digital storage, distribution and monetization of the sound recordings under Colonize's management and administration; and (iii) developing business and technological protocols for maximizing the revenue from the distribution and monetization of the sound recordings under Colonize's management and administration.

44. Palmer was also responsible for the creation and maintenance of Colonize's data and intellectual protection structures, processes and protocols.

45. As the Chief Operations Officer, Palmer was given access to all of Colonize's proprietary and confidential business information, including but not limited to, the Hard Drive, SR Codes, Metadata, Proprietary Computer Program, Business Process, and client information.

46. Palmer was made expressly aware that the Hard Drive, SR Codes, Metadata, Proprietary Computer Program, Business Process, and client information were important business assets of Colonize, were to be kept confidential and were for Colonize's use only.

1 47. Palmer was hired by Colonize as a full-time employee and was expected to
2 dedicate his efforts diligently and exclusively to Colonize.

3 48. At no time was Palmer authorized by Colonize to create his own digital
4 music distribution company, use any of Colonize's proprietary and confidential
5 information and business processes for his own benefit, or to otherwise compete with
6 Colonize.

7 **Palmer's Unlawful Acts**

8 49. In about March 2019, Colonize discovered that Palmer organized and
9 started his own digital music distribution company in January of 2019, while employed
10 by Colonize, using the same proprietary knowledge, information and processes learned
11 by Palmer as an officer of Colonize.

12 50. Colonize also discovered that Palmer was soliciting existing clients of
13 Colonize as well as prospects Palmer knew were being targeted by Colonize, all while
14 still an officer and employee of Colonize.

15 51. On or about March 20, 2019, Colonize terminated Palmer's employment as
16 a result of his inappropriate actions.

17 52. Shortly thereafter, Colonize discovered that Palmer had stolen the Hard
18 Drive holding Colonize's SR Codes and Metadata, as well as a laptop containing the
19 only copy of the Proprietary Computer Program.

20 53. Immediately after learning of Palmer's theft, Colonize contacted Palmer
21 and demanded that he immediately return the Hard Drive and laptop but Palmer refused
22 to do so.

23 54. As Chief Operations Officer of Colonize, Palmer also had exclusive
24 knowledge of certain access codes used by Colonize to access its accounts with its Retail
25 Platform affiliates that monetized the sound recordings that Colonize manages ("Access
26 Codes").

27 55. These accounts contained the funds that were generated by the Retail
28 Platforms as a result of their monetization efforts and that were due to Colonize.

1 56. After Palmer's employment with Colonize was terminated, Colonize
2 discovered that Palmer had not tendered the Access Codes to anyone at Colonize, and
3 as such, Colonize could not access these accounts.

4 57. Colonize contacted Palmer and demanded that he tender the Access Codes,
5 but he refused.

6 58. Palmer had no right to use or retain these Access Codes after his
7 employment with Colonize was terminated.

8 59. A large portion of the funds in these accounts were due to be paid by
9 Colonize to its clients.

10 60. As a result of Palmer's refusal to give Colonize the Access Codes, it took
11 Colonize a significant amount of time and effort to regain exclusive access to the
12 accounts and the funds held in those accounts.

13 61. As a result of Colonize's inability to access the accounts, it was unable to
14 timely pay some of its clients the funds due to them.

15 62. This unnecessarily long delay in paying its clients damaged Colonize's
16 goodwill and credibility with some of its clients.

17 63. The inability to access these funds also impinged Colonize's cash flow and
18 slowed Colonize's business operations, thereby giving Colonize's competitors,
19 including Triwolf and Tango, a competitive advantage.

20 **Triwolf and Tango's Unfair Competition and Exploitation**
21 **of Stolen Trade Secrets**

22 64. In about August 2019, Colonize came to learn that Palmer had obtained
23 new employment with Tango, one of Colonize's competitors as well as Tango's parent
24 company, Triwolf.

25 65. Colonize is informed and believes, and thereon alleges, that after Tango
26 employed Palmer, that Palmer gave Tango copies of Colonize's SR Codes, Metadata
27 and Proprietary Computer Program and that Tango started exploiting them to its
28 advantage.

1 66. Specifically, Colonize is informed and believes, and thereon alleges, that
2 Tango used the Colonize's SR Codes and Metadata to obtain information about
3 Colonize's clients and used that information to specifically solicit Colonize's clients.

4 67. Colonize is also informed and believes, and thereon alleges, that Tango
5 induced certain clients of Colonize to breach their distribution agreements with Colonize
6 and then used Colonize's SR Codes and Metadata to immediately start monetizing the
7 sound recordings owned by those clients, a process that could not have occurred unless
8 Tango had used the stolen SR Codes and Metadata.

9 68. Upon learning that Palmer was now employed by Tango, in or about August
10 2019, Colonize contacted Tango and notified Tango that the confidential information in
11 Palmer's possession was the property of Colonize and demanded that Tango cease and
12 desist from using or otherwise exploiting Colonize's property and proprietary business
13 information.

14 69. Despite receiving the notice from Colonize, Tango refused to return the
15 Hard Drive and laptop containing the Proprietary Computer Program or to cease using
16 or otherwise exploiting Colonize's property and proprietary business information.

17 70. Tango's possession and use of the Hard Drive, Metadata and Proprietary
18 Computer Program gives Tango a competitive advantage over Colonize at Colonize's
19 cost and expense.

20 71. Plaintiff is informed and believes, and thereon alleges, that Palmer refused
21 to give Colonize the Access Codes in order to provide an advantage to Tango and
22 Triwolf.

23 **AS AND FOR A FIRST CAUSE OF ACTION**
24 **(Violation of Defending Trade Secrets Act, 18 U.S.C. § 1836)**
25 **(by Colonize against all Defendants)**

26 72. Colonize repeats, re-alleges and incorporates by reference in this paragraph
27 the allegations set forth in Paragraphs 1 through 71, inclusive, and incorporate them by
28 reference as though set forth fully herein.

1 73. Colonize's SR Codes, Metadata, Proprietary Computer Program, customer
2 list and the Business Process constitute valuable trade secrets (collectively, "Trade
3 Secrets").

4 74. Colonize spent substantial time and money developing these Trade Secrets.

5 75. These Trade Secrets derive independent economic value, actual and
6 potential, from not being generally known to, and not being readily ascertainable by
7 proper means by, other persons who can obtain economic value from their disclosure.

8 76. Colonize's Trade Secrets are the subject of efforts that are reasonable under
9 the circumstances to maintain its secrecy.

10 77. These Trade Secrets were reasonably protected and safeguarded by
11 Colonize, and Plaintiff took reasonable steps to prevent their disclosure or
12 dissemination, including but not limited to, only giving access to these Trade Secrets to
13 two (2) officers of Colonize and no one else and storing them in Colonize's Chief
14 Operations Officer's locked office.

15 78. In addition, as Chief Operations Officer, Palmer was responsible for
16 developing and implementing robust data, intellectual property and proprietary
17 information protection processes and protocols.

18 79. Palmer misappropriated these Trade Secrets by improper means since, after
19 his employment with Colonize was terminated and he was no longer entitled to access
20 or use them, Palmer stole a laptop containing the only copy of Plaintiff's Proprietary
21 Computer Software, and the Hard Drive containing Plaintiff's Metadata and SR Codes
22 and, upon information and belief, gave them to Triwolf and Tango.

23 80. Colonize is informed and believes, and thereon alleges, that Palmer has also
24 disclosed Colonize's Trade Secrets to Triwolf and Tango and they are using Colonize's
25 Trade Secrets to benefit themselves without authorization from Colonize.

26 81. Triwolf and Tango misappropriated Colonize's Trade Secrets by improper
27 means because they knew, and/or had reason to know, that Palmer was Colonize's
28 former Chief Operations Officer before they hired him, and they knew that the Trade

1 Secrets, by their very nature, were confidential and proprietary to Colonize and that
2 Palmer could not have obtained the Trade Secrets unless he stole them from Colonize or
3 obtained them by improper means.

4 82. Colonize is informed and believes, and thereon alleges, that Defendants are
5 using the wrongfully-acquired Trade Secrets to further their own business interests by,
6 among other things: (i) using Colonize's Proprietary Computer Program to more
7 efficiently and profitably operate their business; (ii) using Colonize's proprietary
8 Metadata to more efficiently and profitably manage the sound recordings under
9 Defendants' control; (iii) using Colonize's proprietary Metadata to solicit Colonize's
10 clients; (iv) using Colonize's Business Process to run their businesses more efficiently
11 and profitably and to better compete with Colonize; and (v) impeding Colonize, a
12 business competitor, by prohibiting Colonize from exclusively using its own Trade
13 Secrets.

14 83. Colonize has been damaged because it now must spend significant
15 resources and money to recreate and compile the stolen Trade Secrets and has lost
16 significant business opportunities due to the unfair business advantage obtained by
17 Defendants as a result of their theft of Colonize's Trade Secrets.

18 84. Defendants' actions have damaged Colonize in an amount not readily
19 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
20 (\$10,000,000).

21 **AS AND FOR A SECOND CAUSE OF ACTION**

22 **(Violation of CA Uniform Trade Secrets Act, Cal. Civ. Code § 3426.1)**
23 **(by Colonize against all Defendants)**

24 85. Colonize repeats, re-alleges and incorporates by reference in this paragraph
25 the allegations set forth in Paragraphs 1 through 84, inclusive, and incorporate them by
26 reference as though set forth fully herein.

27 86. Colonize's Trade Secrets contain great value.

28 87. Colonize spent substantial time and resources developing these Trade

1 Secrets.

2 88. These Trade Secrets derive independent economic value, actual and
3 potential, from not being generally known to, and not being readily ascertainable by
4 proper means by, other persons who can obtain economic value from their disclosure.

5 89. Colonize's Trade Secrets are the subject of efforts that are reasonable under
6 the circumstances to maintain its secrecy.

7 90. These Trade Secrets were reasonably protected and safeguarded by
8 Colonize, and Plaintiff took reasonable steps to prevent their disclosure or
9 disseminations, including but not limited to, only giving access to these Trade Secrets
10 to two (2) officers of Colonize and no one else and storing them in Colonize's Chief
11 Operations Officer's locked office.

12 91. In addition, as Chief Operations Officer, Palmer was responsible for
13 developing and implementing robust data, intellectual property and proprietary
14 information protection processes and protocols, all for the exclusive benefit for
15 Colonize.

16 92. Palmer misappropriated these Trade Secrets by improper means because,
17 after his employment with Colonize was terminated and he was no longer entitled to
18 access or use them, Palmer stole a laptop containing the only copy of Plaintiff's
19 Proprietary Computer Software, and the Hard Drive containing Plaintiff's Metadata and
20 SR Codes and, upon information and belief, Palmer gave them to Triwolf and Tango.

21 93. Colonize is informed and believes, and thereon alleges, that Palmer has also
22 disclosed Colonize's Trade Secrets to Triwolf and Tango and that they are using
23 Colonize's Trade Secrets to benefit themselves without authorization from Colonize.

24 94. Triwolf and Tango misappropriated Colonize's Trade Secrets by improper
25 means because they knew, and/or had reason to know, that Palmer was Colonize's
26 former Chief Operations Officer before they hired him, and they knew that the Trade
27 Secrets, by their very nature, were confidential and proprietary to Colonize and that
28 Palmer could not have obtained the Trade Secrets unless he stole them from Colonize or

1 obtained them by improper means.

2 95. Colonize is informed and believes, and thereon alleges, that Defendants are
3 using the wrongfully-acquired Trade Secrets to further their own business interests by,
4 among other things: (i) using Colonize's Proprietary Computer Program to more
5 efficiently and profitably operate their business; (ii) using Colonize's proprietary
6 Metadata to more efficiently and profitably manage the sound recordings under
7 Defendants' control; (iii) using Colonize's proprietary Metadata to solicit Colonize's
8 clients; (iv) using Colonize's Business Process to run their businesses more efficiently
9 and profitably and to better compete with Colonize; and (v) impeding Colonize, a
10 business competitor, by prohibiting Colonize from exclusively using its own Trade
11 Secrets.

12 96. Colonize has been damaged because it now must spend significant
13 resources and money to recreate and compile the stolen Trade Secrets and has lost
14 significant business opportunities due to the unfair business advantage obtained by
15 Defendants as a result of their theft of Colonize's Trade Secrets.

16 97. Defendants' actions have damaged Colonize in an amount not readily
17 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
18 (\$10,000,000).

19 98. Defendants' actions were willful and malicious and done with the intent to
20 harm Colonize.

21 99. As such, Colonize is also entitled to exemplary damages and statutory
22 attorney's fees pursuant to Cal. Civ. Code § 3426.3(c).

23 **AS AND FOR A THIRD CAUSE OF ACTION**

24 **(Violation of Unfair Competition Laws Under**
25 **California Business & Professions Code § 17200 et seq.)**
26 **(by Colonize against all Defendants)**

27 100. Colonize repeats, re-alleges and incorporates by reference in this paragraph
28 the allegations set forth in Paragraphs 1 through 99, inclusive, and incorporates them by

1 reference as though set forth fully herein.

2 101. Colonize is informed and believes and thereon alleges that Defendants'
3 conduct as alleged herein constitutes "unlawful," "unfair" and/or "fraudulent" business
4 practices in violation of the unfair competition provisions of California Business &
5 Professions Code § 17200, et seq.

6 102. The wrongful conduct of Defendants includes, but is not limited to, the use
7 of the Hard Drive, Proprietary Computer Program, SR Codes, Metadata, Business
8 Process and Colonize's client list.

9 103. Defendants' use of the Hard Drive, Proprietary Computer Program, SR
10 Codes, Metadata and Business Process allows the defendants to operate more efficiently,
11 gives Defendants significant insight into Colonize's operations and provides Defendants
12 with confidential knowledge concerning Colonize's clients and Colonize's business
13 dealings with those clients at the expense of Colonize.

14 104. Defendants' use and possession of the Hard Drive, Proprietary Computer
15 Program, SR Codes, Metadata and Business Process provides Defendants with an unfair
16 competitive advantage by depriving Colonize of both the exclusive and general use of
17 same.

18 105. Defendants' actions have harmed Colonize and deprived it of significant
19 business, as well as resulting in lost income, intellectual property, tangible property, and
20 time and money invested in developing and compiling the Proprietary Computer
21 Program, SR Codes, Metadata and Business Processes stolen by Palmer.

22 106. Colonize is informed and believes, and thereon alleges, that Defendants
23 have unlawfully used and continue to unlawfully use the above referenced assets stolen
24 from Colonize for improper commercial gain, including but not limited to, soliciting
25 Colonize's clients and otherwise inducing or attempting to induce Colonize's clients to
26 terminate their business relationships with Colonize and take their business to Tango
27 and/or Palmer.

28 107. As a result of Defendants' conduct, Colonize is entitled to an order of

1 restitution against Defendants.

2 108. California Business and Professions Code § 17203 authorizes injunctive
3 and restitutionary relief against any person who has engaged or proposes to engage in
4 unfair competition.

5 109. Defendants have been unjustly enriched by virtue of their unfair
6 competition as set forth herein. Colonize requests that the Court order Defendants to
7 restore to Colonize all monies and/or property acquired by means of Defendants'
8 unlawful, unfair and fraudulent business practices.

9 110. Accordingly, Colonize is entitled to damages from Defendants in an
10 amount not readily ascertainable, but to be proven at trial and believed to be in excess
11 of Ten Million Dollars (\$10,000,000.00).

12 111. As a direct and proximate result of Defendants' unfair competition,
13 Colonize has suffered injury and harm and will continue to suffer injury and harm unless
14 Defendants are enjoined from the conduct alleged hereinabove.

15 112. Colonize is entitled to, and requests, temporary, preliminary and permanent
16 injunctive relief against Defendants. Unless Defendants are restrained, they will
17 continue to injure Colonize's business.

18 113. Colonize has no adequate remedy at law for the injuries currently being
19 suffered in that Defendants will continue to engage in unfair competition.

20 **AS AND FOR A FOURTH CAUSE OF ACTION**

21 **(Unjust Enrichment)**

22 **(by Colonize against all Defendants)**

23 114. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph
24 the allegations set forth in Paragraphs 1 through 113, inclusive, and incorporates them
25 by reference as though set forth fully herein.

26 115. Upon information and belief, Palmer and Tango, without the consent of
27 Colonize, unlawfully exploited Plaintiff's confidential and proprietary business
28 information, resources, Trade Secrets and intellectual property.

1 116. Palmer, individually as a representative of his own company that competed
2 in the same field as Plaintiff and as an employee of Tango, has received revenue from
3 such unlawful exploitation of Colonize's Trade Secrets and intellectual property. Tango,
4 as Palmer's current employer, and a competitor in the same field as Plaintiff, has
5 received revenue from such unlawful exploitation.

6 117. Prior to Palmer's unlawful acts, Colonize's Trade Secrets and intellectual
7 property were unique to Colonize in the industry and Colonize was the only company in
8 the industry obtaining an economic benefit from said Trade Secrets and intellectual
9 property.

10 118. Colonize was also the only company in the industry that funded the
11 research, development and creation of its Trade Secrets and intellectual property.
12 Colonize invested its own time and resources in the development and protection of its
13 Trade Secrets and intellectual property.

14 119. Such unlawful exploitation of Colonize's Trade Secrets and intellectual
15 property caused Palmer and Tango to obtain an economic benefit over and above what
16 they otherwise would have achieved, without having to expend the time, money and
17 resources that Colonize had already borne in creating the Trade Secrets and intellectual
18 property.

19 120. By reason of the acts of Palmer and Tango as alleged above, Palmer and
20 Tango have been unjustly enriched at Colonize's expense under such circumstances that
21 equity and good conscience require that Palmer and Tango should make restitution to
22 Colonize.

23 121. Accordingly, Colonize is entitled to damages from Defendants in an
24 amount not readily ascertainable, but to be proven at trial and believed to be in excess
25 of Ten Million Dollars (\$10,000,000.00).

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AS AND FOR A FIFTH CAUSE OF ACTION

**(Violation of the Computer Fraud and Abuse Act- 18 U.S.C. § 1030 et seq.)
(by Colonize against Palmer)**

122. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph the allegations set forth in Paragraphs 1 through 121, inclusive, and incorporates them by reference as though set forth fully herein.

123. Palmer accessed Colonize's protected computer network, systems and offices containing computer equipment on which the network and systems could be used, without authorization, to remove, disable or appropriate and pass off as his own, the Trade Secrets, confidential business information, SR Codes, Proprietary Computer Software and Metadata, as well as tangible computer equipment owned and controlled by Colonize.

124. Palmer did so with the intent to defraud and otherwise harm Colonize because Palmer economically competed with Colonize, by starting his own competing company while employed by Colonize and subsequently working for Colonize's competitor, Tango.

125. Palmer's actions caused financial harm to Colonize: (i) in the form of lost income; (ii) damage to its intellectual property and tangible property; (iii) the time and money invested in developing and compiling the SR Codes, Proprietary Computer Program, and Metadata stolen by Palmer; and (iv) the income generated by Palmer's clients that he has solicited, and otherwise induced or attempted to induce, to terminate their business relationships with Colonize in order to take their business to Palmer and/or his current employer, Tango. As such, Palmer received an economically competitive advantage over Colonize.

126. Palmer's conduct has caused a loss in excess of Five Thousand Dollars (\$5,000.00) to Colonize during a one-year period. As such, pursuant to 18 USC § 1030(g), Colonize is entitled to damages in an amount not readily ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000).

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1 127. As a result of Palmer's conduct, Colonize has suffered irreparable and
2 incalculable harm, for which Colonize has no adequate remedy at law, and which will
3 continue unless Palmer is enjoined from further unauthorized access to and use of
4 Colonize's Trade Secrets, SR Codes, Proprietary Computer Program, Business Process,
5 Metadata, tangible computer equipment, systems, and network.

6 128. As such, Colonize is entitled to damages from Palmer in an in excess of
7 Ten Million Dollars (\$10,000,000.00), together with injunctive relief prohibiting Palmer
8 from further accessing, using, or benefitting from in any way, Colonize's Trade Secrets,
9 SR Codes, Proprietary Computer Program, Business Process, Metadata, tangible
10 computer equipment, systems, and network.

11 **AS AND FOR A SIXTH CAUSE OF ACTION**

12 **(Violation of California Comprehensive Computer Data Access and Fraud Act-**
13 **California Penal Code § 502)**
14 **(by Colonize against Palmer)**

15 129. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph
16 the allegations set forth in Paragraphs 1 through 128, inclusive, and incorporates them
17 by reference as though set forth fully herein.

18 130. Palmer knowingly accessed and without permission used Colonize's Trade
19 Secrets, confidential business information, SR Codes, Proprietary Computer Program,
20 Hard Drive, Business Process, and Metadata, as well as tangible computer equipment in
21 order to devise and/or execute a scheme to defraud and deceive in violation of California
22 Penal Code § 502(c)(1).

23 131. Palmer knowingly accessed and without permission took, copied, and/or
24 used Colonize's Trade Secrets, confidential business information, SR Codes, Proprietary
25 Computer Program, Hard Drive, Business Process, and Metadata, as well as tangible
26 computer equipment from Colonize's systems, networks and offices in violation of
27 California Penal Code § 502(c)(2).

28 132. Palmer knowingly and without permission used or caused to be used
Colonize's Trade Secrets, confidential business information, SR Codes, Proprietary

1 Computer Program, Hard, Drive, Business Process, and Metadata, as well as tangible
2 computer equipment in violation of California Penal Code § 502(c)(3).

3 133. Palmer knowingly and without permission accessed and removed Trade
4 Secrets, confidential business information, SR Codes, Proprietary Computer Program,
5 Hard Drive, Business Process, and Metadata, as well as tangible computer equipment
6 from Colonize's systems, networks and offices in violation of California Penal Code §
7 502(c)(4).

8 134. Palmer knowingly and without permission accessed or caused to be
9 accessed Colonize's Trade Secrets, confidential business information, SR Codes,
10 Proprietary Computer Program, Hard Drive, Business Process, and Metadata, as well as
11 tangible computer equipment, systems, networks and offices in violation of California
12 Penal Code § 502(c)(7).

13 135. Colonize suffered and continues to suffer damage as a result of Palmer's
14 violations of the California Penal Code § 502 identified above.

15 136. Palmer's conduct also caused irreparable and incalculable harm and
16 injuries to Colonize, and, unless enjoined, will cause further irreparable and incalculable
17 injury, for which Colonize has no adequate remedy at law.

18 137. Palmer willfully violated California Penal Code § 502 in disregard and
19 derogation of Colonize's rights and Palmer's actions as alleged above were carried out
20 with oppression, fraud and malice.

21 138. Pursuant to California Penal Code § 502(e), Colonize is entitled to
22 injunctive relief, compensatory damages, punitive or exemplary damages, attorneys'
23 fees, costs and other equitable relief.

24 **AS AND FOR A SEVENTH CAUSE OF ACTION**

25 **(Trespass to Chattels)**
26 **(by Colonize against Palmer)**

27 139. Plaintiff repeats, re-alleges and incorporates by reference in this paragraph
28 the allegations set forth in Paragraphs 1 through 137, inclusive, and incorporates them

1 by reference as though set forth fully herein.

2 140. At all relevant times herein alleged, Colonize owned and had the right to
3 exclusively possess the Hard Drive, Proprietary Computer Program, SR Codes, and
4 Metadata.

5 141. Palmer engaged in the wrongful acts specifically alleged above, including
6 accessing, possessing and controlling Colonize's Hard Drive, Proprietary Computer
7 Program, SR Codes, and Metadata in excess of his authorization, and for the sole
8 purpose of gaining access to Colonize's electronically stored Trade Secrets, confidential
9 information and proprietary information for the purpose of misappropriating the same
10 to his own unauthorized use, for the express benefit of himself and Tango.

11 142. Palmer, without Colonize's knowledge or consent, interfered with
12 Colonize's exclusive right to possess, access and control the Hard Drive, Proprietary
13 Computer Program, SR Codes, and Metadata. Said interference was both substantial and
14 continuing, amounting to a complete usurpation of Colonize's possession, control and
15 access to its property.

16 143. As a result, Colonize has suffered substantial harm and detriment, having
17 lost possession, control and access to those chattels for a substantial time, which is and
18 has been continuing in nature.

19 144. Accordingly, Colonize is entitled to damages in an amount not readily
20 ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars
21 (\$10,000,000.00).

22 **AS AND FOR AN EIGHTH CAUSE OF ACTION**

23 **(Conversion)**
24 **(by Colonize against Palmer)**

25 145. Colonize repeats, re-alleges and incorporates by reference in this paragraph
26 the allegations set forth in Paragraphs 1 through 144, inclusive, and incorporates them
27 by reference as though set forth fully herein.

28 146. Colonize owned, possessed, and had a right to possess the Hard Drive,

1 Proprietary Computer Program, SR Codes, and Metadata for purposes of conducting its
2 business.

3 147. Palmer engaged in the wrongful acts specifically alleged above, including
4 taking the Hard Drive, Proprietary Computer Program, SR Codes, and Metadata from
5 Colonize without permission or authority to do so. In so doing, Palmer intentionally and
6 substantially interfered with Colonize's ownership, possession, and right to possess the
7 Hard Drive, Proprietary Computer Program, SR Codes, and Metadata and caused harm
8 to Colonize.

9 148. Colonize did not consent to Palmer's removal of this property and data.

10 149. Colonize has demanded the immediate return of the Hard Drive,
11 Proprietary Computer Program, SR Codes, and Metadata. Notwithstanding Colonize's
12 demand, Palmer has refused to return the property to Colonize.

13 150. Because of Palmer's wrongful conversion of Colonize's property, Colonize
14 has sustained damages, the exact amount of which is not readily ascertainable, but to be
15 proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000.00).

16 151. Palmer has acted with fraud, oppression, and/or malice with the deliberate
17 intent to injure Colonize's business and acted with conscious disregard for Colonize's
18 rights, thereby warranting an award of punitive damages in an amount appropriate to
19 punish Palmer and deter others from engaging in similar misconduct.

20 **AS AND FOR A NINTH CAUSE OF ACTION**

21 **(Breach and Duty of Loyalty and Fidelity)**
22 **(by Colonize against Palmer)**

23 152. Colonize repeats, re-alleges and incorporates by reference in this paragraph
24 the allegations set forth in Paragraphs 1 through 151, inclusive, and incorporates them
25 by reference as though set forth fully herein.

26 153. Palmer was employed by Colonize in a position of trust and confidence,
27 specifically as Chief Operating Officer. While so employed, Palmer was under a duty to
28 act solely for the benefit of Colonize and not contrary to Colonize's interests with respect

1 to all matters connected with this employment relationship.

2 154. While so employed as an officer in this position of trust and confidence,
3 Palmer breached his duty to Colonize by, among other things, neglecting his professional
4 obligations while still working for Colonize, forming and working on behalf of a
5 competing business while still employed by Colonize, disparaging Colonize while still
6 working for Colonize and soliciting Colonize's clients and prospective clients for the
7 benefit of himself and/or the benefit of others, while employed by Colonize.

8 155. California Labor Code § 2863 expressly provides that an employee who
9 has any business to transact on his own account, similar to that entrusted him by his
10 employer, shall always give the preference to the business of the employer.

11 156. As a proximate result of Palmer's breach of his duties, Colonize has
12 suffered actual and/or consequential damages in an amount not readily ascertainable, but
13 to be proven at trial and believed to be in excess of Ten Million Dollars
14 (\$10,000,000.00).

15 157. Colonize is informed and believes and thereon alleges that, in committing
16 the breach of duty as described above, Palmer was guilty of malice and/or oppression
17 with the deliberate intent to injure Colonize's business and improve his and Tango's
18 own business and acted with conscious disregard for Colonize's rights and for his own
19 duty to Colonize as the Chief Operating Officer of Colonize, thereby warranting an
20 award of punitive damages in an amount appropriate to punish Palmer and deter others
21 from engaging in similar misconduct.

22 **AS AND FOR A TENTH CAUSE OF ACTION**

23 **(Faithless Servant/Breach of Duty of Loyalty)**
24 **(by Colonize against Palmer)**

25 158. Colonize repeats, re-alleges and incorporates by reference in this paragraph
26 the allegations set forth in Paragraphs 1 through 157, inclusive, and incorporates them
27 by reference as though set forth fully herein.

28 159. From the time that Colonize hired Palmer, he was in the top three highest-

1 ranking, and highly-compensated Officers of Colonize, as well as an agent and servant
2 of Colonize who was obligated to act only in Colonize's best interests and pursuant to
3 applicable laws and Colonize's regulations and policies.

4 160. Palmer owed Colonize duties of loyalty and fidelity, was prohibited from
5 acting in a manner inconsistent with his agency or trust and was bound to exercise the
6 utmost good faith and loyalty in the performance of his duties for Colonize.

7 161. By knowingly, intentionally and purposefully opening and operating his
8 own digital music distribution company while employed by Colonize and stealing
9 Colonize's Trade Secrets, intellectual property and physical property, Palmer knowingly
10 and intentionally breached the duties of loyalty, fidelity and good faith that he owed to
11 Colonize as its officer, employee, agent and servant.

12 162. By intentionally engaging in that improper and illegal conduct, Palmer
13 acted in a manner directly adverse to and wholly inconsistent with his agency obligations
14 to Colonize.

15 163. Thus, from at least January 15, 2019 through November 20, 2019 Palmer
16 breached the duties of duty of loyalty and fidelity that he owed to Colonize and was a
17 faithless servant.

18 164. Palmer's breach of his duties of loyalty and fidelity owed to Colonize
19 substantially violated the terms of his employment.

20 165. Palmer engaged in the above acts which constituted breaches of his duties
21 of loyalty and fidelity, intentionally, maliciously and/or with wanton and willful
22 disregard for Colonize's rights and interests.

23 166. Colonize is entitled to, and respectfully demands, judgment in its favor and
24 against Palmer: (i) ordering Palmer to forfeit all improperly obtained remuneration
25 obtained while in breach of his duties of loyalty and fidelity and to disgorge all gains,
26 profits and savings Palmer derived from his illegal conduct; (ii) ordering Palmer to
27 disgorge all monies Colonize paid to Palmer during the time he breached his duties to
28 Colonize and all monies received as a result of those breaches; (iii) awarding the amount

1 of actual damages to Colonize resulting from Palmer's illegal conduct, which are not
 2 readily ascertainable, but will be proven at trial and believed to be in excess of Ten
 3 Million Dollars (\$10,000,000.00); (iv) awarding punitive damages to Colonize in an
 4 amount appropriate to punish Palmer and deter others from engaging in similar
 5 misconduct; (v) awarding reasonable attorneys' fees and costs to Colonize in an amount
 6 to be determined by the Court; and (vi) awarding for prejudgment and post judgment
 7 interest to Colonize at the maximum legal rate, as provided by law, as applicable, as an
 8 element of damages which Colonize has suffered as a result of Palmer's acts as a
 9 faithless servant.

10 **AS AND FOR AN ELEVENTH CAUSE OF ACTION**

11 **(Intentional Interference with Prospective Economic Relations)**
 12 **(by Colonize against Palmer)**

13 167. Colonize repeats, re-alleges and incorporates by reference in this paragraph
 14 the allegations set forth in Paragraphs 1 through 166, inclusive, and incorporates them
 15 by reference as though set forth fully herein.

16 168. At all times relevant, Colonize was in an economic relationship with the
 17 Retail Platforms and Colonize's clients.

18 169. Palmer, as Chief Operations Officer of Colonize, was aware of Colonize's
 19 relationships with the Retail Platforms and its clients and the economic benefit generated
 20 by the Retail Platforms.

21 170. Palmer improperly withheld the Access Codes from Colonize after his
 22 employment with Colonize was terminated.

23 171. By engaging in this conduct, Palmer was substantially certain that his
 24 actions would interfere with Colonize's ability to access the money it was due from the
 25 Retail Platforms and that Colonize owed to its clients.

26 172. Accordingly, Colonize is entitled to damages from Defendants in an
 27 amount not readily ascertainable, but to be proven at trial and believed to be in excess
 28 of Ten Million Dollars (\$10,000,000.00).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Colonize respectfully prays for judgment as follows:

1. On the First Cause of Action by Colonize as against all Defendants for their violation of the Defending Trade Secrets Act, 18 U.S.C. § 1836, granting Colonize damages in an amount not readily ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000);

2. On the Second Cause of Action by Colonize as against all Defendants for their violation of the California Uniform Trade Secrets Act, Cal. Civ. Code § 3426.1, granting Colonize damages in an amount not readily ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000), together with exemplary damages, and attorneys' fees as provided for in the statute;

3. On the Third Cause of Action by Colonize as against all Defendants for their violation of the Unfair Competition Laws under California Business and Professions Code § 17200 *et seq.*, granting Colonize damages in an amount not readily ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000); an order of restitution requiring Defendants to restore to Colonize all monies and/or property acquired by means of Defendants' unlawful, unfair and fraudulent business practices; and temporary, preliminary and permanent injunctive relief against Defendants;

4. On the Fourth Cause of Action by Colonize as against all Defendants for unjust enrichment, granting Colonize damages in an amount not readily ascertainable, but to be proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000);

5. On the Fifth Cause of Action by Colonize as against Palmer for violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, granting Colonize damages from Palmer in excess of Ten Million Dollars (\$10,000,000.00), together with injunctive relief prohibiting Palmer from further accessing, using, or benefitting from in

1 any way, Colonize's Trade Secrets, confidential business information, Hard Drive,
2 Proprietary Computer Program, SR Codes, Metadata, tangible computer equipment,
3 systems, and network;

4 6. On the Sixth Cause of Action by Colonize as against Palmer for violation of
5 California Penal Code § 502, granting Colonize injunctive relief, compensatory
6 damages, punitive or exemplary damages in excess of Ten Million Dollars
7 (\$10,000,000.00), attorneys' fees, costs and other equitable relief provided by the
8 statute;

9 7. On the Seventh Cause of Action by Colonize as against Palmer for trespass
10 to chattels, granting Colonize damages in an amount not readily ascertainable, but to be
11 proven at trial and believed to be in excess of Ten Million Dollars (\$10,000,000);

12 8. On the Eighth Cause of Action by Colonize as against Palmer for conversion,
13 granting Colonize damages in an amount not readily ascertainable, but to be proven at
14 trial and believed to be in excess of Ten Million Dollars (\$10,000,000), as well as
15 punitive damages in an amount appropriate to punish Palmer and deter others from
16 engaging in similar misconduct;

17 9. On the Ninth Cause of Action by Colonize as against Palmer for breach of
18 the duties of loyalty and fidelity, granting Colonize actual and/or consequential damages
19 in an amount not readily ascertainable, but to be proven at trial and believed to be in
20 excess of Ten Million Dollars (\$10,000,000), as well as punitive damages in an amount
21 appropriate to punish Palmer and deter others from engaging in similar misconduct;

22 10. On the Tenth Cause of Action by Colonize as against Palmer for faithless
23 servant/breach of his duties of loyalty and fidelity, ordering Palmer to forfeit all
24 improperly obtained remuneration obtained while in breach of his duties and to disgorge
25 all gains, profits and savings Palmer derived from his illegal conduct; to disgorge all
26 monies Colonize paid to Palmer during the time he breached his duties to Colonize and
27 all monies received as a result of those breaches; the amount of actual damages to
28 Colonize resulting from Palmer's acts while in breach of his duty and loyalty, which are

1 not readably ascertainable, but will be proven at time of trial believed to be in excess of
2 Ten Million Dollars (\$10,000,000.00); an award of punitive damages in an amount
3 appropriate to punish Palmer and deter others from engaging in similar misconduct; for
4 reasonable attorneys' fees and costs in an amount to be determined by the Court; and for
5 prejudgment and post judgment interest at the maximum legal rate, as provided by law;

6 11. On the Eleventh Cause of Action by Colonize as against Palmer for
7 intentional interference with prospective economic relations, granting Colonize damages
8 in an amount not readily ascertainable, but to be proven at trial and believed to be in
9 excess of Ten Million Dollars (\$10,000,000);

10 12. Ordering that Defendants pay all of Plaintiff's costs, disbursements and
11 reasonable attorneys' fees;

12 13. Ordering that Defendants be required to pay to Plaintiff prejudgment
13 interest at any applicable statutory rate; and

14 14. Granting all such other and further relief to Plaintiff as the Court may deem
15 just and appropriate.

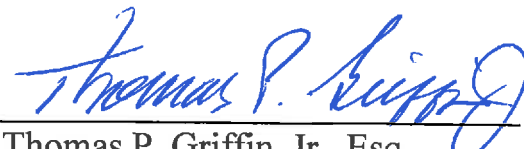
16 **DEMAND FOR JURY TRIAL**

17 Plaintiff requests a trial by jury on all issues so triable.

18 Dated: December 4, 2020

19 Respectfully submitted,

20 **HEFNER STARK & MAROIS, LLP**

21
22 By: 
23 Thomas P. Griffin, Jr., Esq.
24 Attorneys for Plaintiff
25 Colonize Media, Inc.
26
27
28

Court: USDC, Eastern District Division
Case No.: 1:20-cv-01053-DAD-SAB
Case Name: Colonize Media, Inc. v. Tate A. Palmer, et al.

PROOF OF SERVICE

I am a citizen of the United States, employed in the city and county of Sacramento. My business address is 2150 River Plaza Drive, Suite 450, Sacramento, California 95833-3883. I am over the age of 18 years and not a party to the above-entitled action. I am readily familiar with my employer's practices for collection and processing of correspondence for mailing with the United States Postal Service.

On December 4, 2020, I served the following documents:

PLAINTIFF'S FIRST AMENDED COMPLAINT AND JURY DEMAND

✓ **By Electronic Mail (NEF)**, I caused the above referenced document(s) to be served by the court via NEF and hyperlink to the document(s) on December 4, 2020. I checked the CM/ECF docket for this case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email address indicated below:

Thomas Key Richards

Email: trichards@singhtraubenlaw.com,
trichards1975@gmail.com,
jtrauben@singhtraubenlaw.com

Counsel for Defendants Triwolf Media, LLC
and Tango Multi Media Productions, LLC

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on December 4, 2020, at Elk Grove, California.

► 
Luz Samosa